



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CTI/166616

PRELIMINARY RECITALS

Pursuant to a petition filed June 12, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on July 01, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has a factual or legal basis for directing that a tax intercept notice be rescinded.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Glennetta Rucker

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner was notified on July 21, 2014 that she had been overissued child care for the period of August 4, 2013 through February 28, 2014 in the amount of \$3170.74. She did not dispute the allegation and did begin to make payments.
3. Petitioner missed payments on the child care overissuance involved here in September, October and December 2014. She also missed a payment in May 2015.
4. Petitioner was sent a tax intercept notice dated June 12, 2015 that informed Petitioner that any potential income tax refund was subject to intercept to help pay off the overpayment. The balance due was noted to be \$3030.74.
5. Petitioner timely appealed the tax intercept notice.

DISCUSSION

Wisconsin Statute §49.195(3), provides that the agency must determine if a childcare overpayment has occurred under §49.155 and that the agency must seek recovery of the overpayment. The Department of Children and Families (DCF) may utilize tax intercept as a means of recovering the overpayment. *Wis. Stat., §49.85*. In fact, the *Statutes at §49.85(2)(b)*, require that the DCF, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of W-2 benefits, including child care.

The Department of Children and Families must notify the person that it intends to certify overpayments to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id. at §49.85(3)*.

Here Petitioner did not, and does not dispute, the overpayment. Rather, Petitioner asks that the tax intercept be lifted as she wants to be able to continue monthly payments. The policy on missing payments states:

Dunning Notices

If a provider fails to return a repayment agreement, fails to make a payment or pays too little, they will receive a dunning notice. A dunning notice is a past due notice that informs the provider that they are required to pay the balance of the debt and failure to complete and return a repayment agreement could result in delinquency and further collections actions.

If a provider receives three (3) dunning notices over the life of the debt, CARES determines the provider to be delinquent and the debt is referred to the Central Recoveries Enhanced System (CRES) collection system for additional collection action including levy, warrant/lien and Department of Revenue (DOR) state tax intercept.

If a provider is delinquent on a current overpayment, and he/she receives another overpayment, the second overpayment is automatically considered delinquent, without the provider receiving an additional three (3) dunning notices.

Wisconsin Shares Child Care Subsidy Policy Manual, §4.8.2.

The Division of Hearings and Appeals does not have authority to ignore program regulation or create its own exceptions to that regulation. The Division of Hearings and Appeals does not have equitable powers. *See, e.g., Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F. Supp. 540, 545 (E.D. Wis.1977).

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have a factual basis or other legal authority to direct that this tax intercept be rescinded.

Now therefore, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of October, 2015

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 9, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit